

## Title 18. State Board of Equalization

### NOTICE IS HEREBY GIVEN

The State Board of Equalization (the Board), pursuant to the authority vested in it by section 15606 of the Government Code and section 7051 of the Revenue and Taxation Code, proposes to amend Regulation 1602, Food Products, in Title 18, Division 2, Chapter 4, Article 8, of the California Code of Regulations. A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on Tuesday, July 18, 2006. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by the time of the public hearing.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 1602, subdivision (b), currently provides that when a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine or toys), the application of tax depends upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood products, a segregation must be made and the tax measured by the retail selling price of such nonfood products. Furthermore, sales of combination packages that include food products and nonfood products are considered exempt sales of food if:

1. The retail value of the food contents is at least 90 percent of the retail value of the total package contents, and
2. The retail value of the package container is 50 percent or less of the retail value of the entire package.

Sales of combination packages that do not meet both of the above-conditions are subject to tax based on the selling price of the entire package less the value of the food. In addition, to claim an exemption for the sale of food products in the combination package, retailers' records must separately state the value of the food and nonfood products and those values should be separately stated on the invoice or receipt.

The Board, in agreement with the California Retailers Association (CRA), the California Grocers Association (CGA), and the National Association of Theatre Owners of California/Nevada (NATO), proposes amending Regulation 1602, Food Products, subdivision (b), Sales of Combination Packages, as follows:

- If the retailer has documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the retailer must continue to segregate the selling price of the food and nonfood products. The measure of tax consists of the retail selling price of the nonfood products.

- If the retailer does not have documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the tax may be measured by the retail selling price of the entire package.
- If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

In addition to the proposed revisions to subdivision (b), the Board proposes deleting obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602 and renumbering within subdivision (a) as necessary. The text proposed for deletion is based on statutory provisions in effect between July 15, 1991, and November 30, 1992, that excluded snack foods, candy, gum, confectionery, and bottled water from the definition of food products.

#### COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulatory action will result in no direct or indirect cost or savings to any state agency, or any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board makes an initial determination that the proposed amendments to Regulation 1602 will not have a significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulations and proposed amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California.

The regulations and amendments as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

#### COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

## FEDERAL REGULATIONS

Regulation 1602 has no comparable federal regulations.

## AUTHORITY

Section 15606 of the Government Code and section 7051 of the Revenue and Taxation Code.

## REFERENCE

Article XIII, Section 34, of the California Constitution and section 6359 of the Revenue and Taxation Code.

## CONTACT

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Trecia Nienow, (916) 445-3723, email [Trecia.Nienow@boe.ca.gov](mailto:Trecia.Nienow@boe.ca.gov), or Mr. Randy Ferris, (916) 322-0437, email [Randy.Ferris@boe.ca.gov](mailto:Randy.Ferris@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Trecia Nienow or Randy Ferris, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Diane Olson, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the Board's attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed regulatory action.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscore and strike-out version (express terms) of the proposed amendments to the regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments are available on the internet at the Board's website <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the Board may, in accordance with law, adopt the proposed amendments if the text remains substantially the same as described in the text originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations and amendments. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.